

PART 371—RECORDKEEPING REQUIREMENTS FOR QUALIFIED FINANCIAL CONTRACTS

Sec.

371.1 Scope, purpose and applicability.

371.2 Definitions.

371.3 Form, availability and maintenance of records.

371.4 Content of records.

371.5 Enforcement actions.

APPENDIX A TO PART 371—FILE STRUCTURE FOR QUALIFIED FINANCIAL CONTRACT (QFC) RECORDS

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§ 371.1 Scope, purpose and applicability.

(a) *Scope*. This part applies to insured depository institutions that are in a troubled condition as defined in § 371.2(f).

(b) *Purpose*. This part establishes recordkeeping requirements with respect to qualified financial contracts for insured depository institutions that are in a troubled condition.

(c) *Applicability*. An insured depository institution shall comply with this part within 60 days after written notification by the institution's appropriate Federal banking agency or the FDIC that it is in a troubled condition under § 371.2(f). The FDIC may, at its discretion, grant one or more extensions of time for compliance with this part. No single extension shall be for a period of more than 30 days. An insured depository institution may request an extension of time by submitting a written request to the FDIC at least 15 days prior to the deadline for its compliance with the requirements of this part. The written request for an extension must contain a statement of the reasons why the institution cannot comply by the deadline for compliance.

§ 371.2 Definitions.

For purposes of this part:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) *Appropriate Federal banking agency* means the agency or agencies designated under 12 U.S.C. 1813(q).

(c) *Insured depository institution* means any bank or savings association, as defined in 12 U.S.C. 1813, the deposits of which are insured by the FDIC.

(d) *Position* means the rights and obligations of a person or entity as a party to an individual transaction under a QFC.

(e) *Qualified financial contracts* (QFCs) mean those qualified financial contracts that are defined in 12 U.S.C. 1821(e)(8)(D) to include securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements and any other contract determined by the FDIC to be a QFC as defined in that section.

(f) *Troubled condition* means for purposes of this part, any insured depository institution that:

(1) Has a composite rating, as determined by its appropriate Federal banking agency in its most recent report of examination, of 3 (only for insured depository institutions with total consolidated assets of ten billion dollars or greater), 4, or 5 under the Uniform Financial Institution Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating;

(2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(3) Is subject to a cease-and-desist order or written agreement issued by the appropriate Federal banking agency, as defined in 12 U.S.C. 1813(q), that requires action to improve the financial condition of the insured depository institution or is subject to a proceeding initiated by the appropriate Federal banking agency which contemplates the issuance of an order that requires action to improve the financial condition of the insured depository institution, unless otherwise informed in writing by the appropriate Federal banking agency;

(4) Is informed in writing by the insured depository institution's appropriate Federal banking agency that it is in troubled condition for purposes of 12 U.S.C. 1831i on the basis of the institution's most recent report of condition or report of examination, or other

§ 371.3

information available to the institution's appropriate Federal banking agency; or

(5) Is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

§ 371.3 Form, availability and maintenance of records.

(a) *Form and availability.* The records required to be maintained by an insured depository institution for QFCs under this part—

(1) Except for records that must be maintained through electronic files under appendix A of this part, may be maintained in any form, including in an electronic file, provided that the records are updated at least daily;

(2) If the records are not maintained in written form, will be capable of being reproduced or printed in written form; and

(3) Will be made available upon written request by the FDIC immediately at the close of processing of the institution's business day, for a period provided in that written request.

(b) *Maintenance of records after the institution is no longer in a troubled condition.* Insured depository institutions that are in a troubled condition as defined in § 371.2(f) shall continue to maintain the capacity to produce records required under this part on a daily basis for a period of one year after the date that the appropriate Federal banking agency notifies the institution that it is no longer in a troubled condition as defined in § 371.2(f).

(c) *Maintenance of records after an acquisition of an institution that is in a troubled condition.* If an insured depository institution that has been determined by the appropriate Federal banking agency to be in a troubled condition ceases to exist as an insured depository institution as a result of a merger or a similar transaction into an insured depository institution that is not in a troubled condition imme-

diately following the acquisition, the obligation to maintain records under this part on a daily basis will terminate when the institution in a troubled condition ceases to exist as a separately insured depository institution.

§ 371.4 Content of records.

For each QFC for which an insured depository institution is a party or is subject to a master netting agreement involving the QFC, that institution must maintain records as listed under appendix A of this part.

§ 371.5 Enforcement actions.

Violating the terms or requirements of the recordkeeping requirements set forth in this part constitutes a violation of a regulation and subjects the participating entity to enforcement actions under Section 8 of the FDI Act (12 U.S.C. 1818).

APPENDIX A TO PART 371—FILE STRUCTURE FOR QUALIFIED FINANCIAL CONTRACT (QFC) RECORDS

QFC RECORDKEEPING REQUIREMENTS

A. Electronic Files To Be Maintained for QFCs

Any insured depository institution that is subject to this part ("institution") must produce and maintain, in an electronic file in a format acceptable to the FDIC, the position level data found in Table A1 for all open positions in QFCs entered into by that institution or for which the institution is subject. To fulfill this requirement, not later than three business days after the institution's receipt of the written notification from the FDIC under § 371.1(c) of this part, the institution must provide the FDIC with (i) a directory of the electronic files that will be used by the institution to maintain the position level data found in Table A1 and (ii) a point of contact at the institution should the FDIC have follow-up questions concerning this information. In addition, for such data, the institution must produce at the close of processing of the institution's business day a report in a format acceptable to the FDIC that aggregates the current market value and the amount of QFCs by each of the fields in Table A1. The institution must produce the report within 60 days of a written notification by the FDIC for the period specified in the notification. Notwithstanding the above requirements, for institutions in a troubled condition with less than twenty open QFC positions upon receipt of the written notification from the FDIC or the institution's appropriate Federal banking agency under part